

**SUPREME COURT OF WISCONSIN**  
**OFFICE OF LAWYER REGULATION**

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**Public Reprimand With Consent**

**Benjamin J. Harris,  
Attorney at Law**

**08-OLR-3**

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**Matter 1**

In spring 2002, a woman (“Client 1”) hired Attorney Benjamin Harris to represent her in a real estate matter relating to a parcel of real property in Milwaukee, Wisconsin (the “Property”). Harris prepared a land contract between Client 1 and a buyer (“Buyer 1”) whereby Buyer 1 was to purchase the Property (the “Buyer 1 Land Contract”). The final payment on the Buyer 1 Land Contract was to be due in May 2005.

In May 2005, Client 1 contacted Harris and advised him that the Buyer 1 Land Contract was due and that Buyer 1 had defaulted. Thereafter, Harris mailed Buyer 1 a letter regarding her performance under the Buyer 1 Land Contract. According to Harris, Buyer 1’s attorney contacted Harris and advised Harris that his client still wanted to purchase the property, that she was working on obtaining a loan and needed the payoff amount for the Buyer 1 Land Contract. Harris hoped that Buyer 1 would either complete the financing or voluntarily terminate her interest in the land contract.

For working on the foreclosure of the Buyer 1 Land Contract, Harris quoted Client 1 a fee amount of \$1,300. Client 1 paid portion of the fee, \$900. According to Client 1, she understood that the initial fee of \$900 was all that was needed to begin the foreclosure process.

Harris then let the file sit with no further action because of the press of business and because Client 1 had not paid the remainder of the fee. However, no one from Harris' office contacted Client 1 to inform her that she would need to pay the fee in full before Harris would continue with the representation.

In fall 2005, another potential buyer ("Buyer 2") expressed interest in the Property. Harris prepared for Buyer 2 a one-year option to purchase the property for \$40,000. Harris spoke with Buyer 2 on a few occasions, but nothing was ever signed. According to Client 1, Buyer 2 was waiting for the Buyer 1 Land Contract to be foreclosed before he could proceed with his purchase. Furthermore, according to Client 1, Buyer 2 offered Buyer 1 several thousand dollars to sign over the Property, but Buyer 1 refused this offer.

In February 2006, Client 1 contacted Harris and Harris realized that the Buyer 1 Land Contract had sat and Harris advised Client 1 that he would be moving forward with the foreclosure and subsequent sale of the Property at no further charge to her.

Later, Harris told Client 1 that he was going to purchase the property himself because he had caused them to lose the buyer. In a January 30, 2007 letter to OLR, Harris explained, "As I am a real estate investor, I offered to purchase the property in the spring of 2006. I prepared the offer and presented it to [Client 1] and advised her that she should have someone review the offer. She then took the offer and faxed over the accepted offer the next day. I am unaware if anyone reviewed it on her behalf or not."

On June 8, 2006, Harris and Client 1 signed Harris' offer to purchase the Property with a purchase price of \$40,000, with closing to occur no later than June 30, 2006.

On July 5, 2006, Harris and Client 1 signed a handwritten document, which provides, “The parties agree to extend closing to July 31<sup>st</sup>, 2006 with buyer either cashing out seller completely or assuming existing mortgage & paying difference. Seller acknowledged receipt of \$500 on this date as consideration for extending closing.”

Because Harris had issues with financing and was unable to close on the property in July, on August 16, 2006, Harris and Client 1 entered into a land contract, prepared by Harris, for the sale of the Property from Client 1 to Harris for the purchase price of \$40,000 (the “Harris Land Contract”). The Harris Land Contract was to be paid in full by March 1, 2007. Harris explained, “I paid [Client 1] the downpayment [sic] and monthly payments. The land contract was scheduled to close in March of 2007, but in the interim and much to our surprise, [Buyer 1] answered the publication summons. As such, I couldn’t close on the property.”

Client 1 did not sign a written consent acknowledging that she was entering a business transaction with Harris regarding the Property while Harris was representing her as her attorney with respect to the Property.

In October 2006, Harris filed a summons and complaint to foreclose on the Buyer 1 Land Contract. Buyer 1 filed an answer in March 2007. In June 2007, Harris advised the court that Buyer 1 had obtained financing to avoid foreclosure. The parties then prepared a stipulation for dismissal and the court dismissed the case.

By failing to file an action against Buyer 1 to foreclose on the Buyer 1 Land Contract between August 2005 and October 2006, Harris violated SCR 20:1.3, which provides, “A lawyer shall act with reasonable diligence and promptness in representing a client.”

By entering into a land contract with Client 1 without obtaining the requisite written consent from Client 1, Harris violated former SCR 20:1.8(a), effective through June 30, 2007, which stated, “A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

## **Matter 2**

In September 2005, plaintiff (“Plaintiff”) filed a complaint in Milwaukee Circuit Court against a company (“Client 2”). Plaintiff processes and settles card transactions on behalf of merchants who accept credit and debit cards payments. Client 2 is a merchandise exporting company, which signed an agreement with Plaintiff obligating Plaintiff to reimburse all charge backs and associated fees incurred with respect to the processing of credit card transactions. Client 2 agreed to resolve any disputes in the state courts of Wisconsin.

The Plaintiff’s complaint alleged that since 2004 credit card transactions initiated by Client 2 totaling \$17,891.54 had been charged back, that Plaintiff demanded payment from Client 2, and Client 2 had failed or refused to reimburse Plaintiff.

The owners of Client 2, who live in Maryland, hired Harris to represent them in the defense of the action brought by Plaintiff. In November 2005, Harris filed a notice of

appearance and an answer, denying any amounts due and owing. Harris attended an initial scheduling conference in December 2005.

On December 23, 2005, Harris sent Client 2 a letter, enclosing the scheduling order, explaining that Harris had attended the hearing on their behalf, and informing them that Harris would be in touch early in January 2006. Harris never contacted them in January 2006. Further, between January and April 2006, Client 2 left numerous voicemail messages for Harris and he did not respond.

In March 2006, Plaintiff filed a brief in support of its motion to file an amended complaint, increasing the amount of charge backs owed by Client 2 to approximately \$39,000. According to the Client 2, Harris never filed a response contesting these arguments. CCAP records indicate that no amended answer was filed.

In April 2006, a pre-trial conference was held. According to Client 2, Harris failed to communicate with them prior to the pre-trial conference and failed to communicate about hearings and postponements as they occurred.

In May 2006, a motion hearing was held to consider Plaintiff's motion to amend the complaint to allege that Client 2 owed more than \$39,000 in un-retuned charges. Thereafter, Client 2 reviewed CCAP and discovered that the court granted Plaintiff's motion to amend its complaint because the motion was unopposed and Harris failed to appear on their behalf at the motion hearing. Then, Client 2 telephoned Harris, with no response from Harris.

Late in May 2006, a status conference was held, which Harris attended. During such hearing, Plaintiff moved for summary judgment. Harris did not consult with Client 2 prior to the

hearing. That day, Harris sent Client 2 a letter regarding the hearing, informing them that the judge would likely grant the plaintiff's motion for summary judgment and discussing settlement options. The next hearing was scheduled for June 2006.

During June and July 2006, Client 2 left numerous voice messages for Harris and emailed him regarding the hearings and the status of the case. They were able to reach Harris only briefly on June 5, 2006, at which time he informed them that he would do better in responding to their concerns.

On July 11, 2006, Client 2 sent Harris a letter, disputing Plaintiff's factual allegations. On July 12, 2006, Client 2 wrote a letter to Harris, outlining their attempts to contact him and his failure to respond. Client 2 further expressed that the funds were never deposited into Client 2's bank account and, therefore, Plaintiff was not entitled to recover any money.

Harris did not respond to the July 11 and 12, 2006 letters. Harris did not again communicate with Client 2 until he sent them a letter dated September 23, 2006, the day after a status conference.

After receiving his letter, Client 2 telephoned Harris several times between September 28 and October 20, 2006. Having received no response from Harris, on October 20, 2006, Client 2 sent a certified letter terminating Harris for his lack of diligence and failure to communicate.

On November 14, 2006, Harris sent Client 2 a letter of apology, in which he stated, "I need to apologize for my delay in getting back to you after your message and letters." Harris informed Client 2 that Plaintiff was still interested in settlement and their attorney had recently

contacted him. Harris provided Client 2 his cellular and home phone numbers, so that they might reach him more easily.

On or about November 27 or 28, 2006, Harris spoke with Client 2 and discussed the settlement proposals with them. Client 2 indicated to Harris they would agree in principle, but wanted to see it in writing. According to Client 2, they had not received any settlement proposals in writing and they wanted to make sure everything was acceptable before agreeing. Harris did not tell them that he was going to be talking to the court.

In early December 2006, Harris advised the court that the matter was settled and, therefore, it was removed from the trial calendar.

On or about December 27 or 28, 2006, Client 2 received a letter from Harris along with a draft of the stipulation and order for dismissal and the release. In the letter, Harris asked that they review the documents and call to discuss them. Client 2 called Harris on January 2 and 8, 2007, leaving messages on his cellular phone voice mail and with his office secretary, respectively. Harris did not respond.

On January 15, 2007, Client 2 sent Harris a letter, again with no response. Thereafter, with a deadline settlement date of February 1, 2007 fast approaching, Client 2 felt it necessary to sign the agreement without having their questions answered and forwarded it to Plaintiff along with a settlement payment of \$7,500.

By failing to respond to Plaintiff's motion to amend its complaint and by failing to attend the motion hearing in May 2006, Harris violated SCR 20:1.3, which provides, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to consistently inform Client 2 about the status of their case and respond to their numerous attempts to contact him, Harris violated former SCR 20:1.4(a) (effective through June 30, 2007), which provides “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

### **Matter 3**

In 2003, a man (“Client 3”) hired Harris, to represent him in his divorce in Wisconsin. Harris filed the summons and petition in May 2003.

In November 2004, the parties entered into a marital settlement agreement. Pursuant to the property division agreement and court order, Client 3 was to make an equalization payment of 31,000 to his ex-wife upon the sale of the couple’s marital residence.

After the marital residence was sold, Client 3 offered to pay his ex-wife \$2,500 followed by monthly payments, but she refused such offer and her counsel scheduled an order to show cause for contempt hearing for October 2006. The parties continued the hearing to December 5, 2006. Client 3 spoke with Harris on that date and Harris appeared on Client 3’s behalf. During the hearing, Harris and the wife’s attorney (“Opposing Counsel”) advised the court that they had reached a stipulation regarding the \$31,000 payment and requested a review date of January 23, 2007. The hearing was adjourned to January 23, 2007.

After the December 5, 2006 hearing and over the next 5 months, Client 3 telephoned Harris dozens of times and left voicemail messages requesting a status update on his case, with no response from Harris. On December 12, 2006, Opposing Counsel forwarded the proposed

Stipulation and Order to Harris for review with Client 3. Harris never contacted Client 3 to discuss the Stipulation and Order.

Harris did not inform Client 3 that the hearing had been adjourned to January 23, 2007. Both Client 3 and Harris failed to appear at the January 23, 2007 hearing. The court made a default judgment against Client 3 and found Client 3 in contempt for his willful failure to pay the equalization payment of \$31,000. The court issued a bench warrant for his arrest and ordered Client 3 to serve 100 days in jail with a one year stay for Client 3 to purge the contempt by making payments ordered by the court. Harris did not inform Client 3 of the contempt order or the bench warrant.

In April 2007, Client 3 left a voicemail for Harris in which Client 3 fired Harris. Client 3 hired another attorney ("Successor Counsel") to represent him thereafter. On April 17, 2007, Successor Counsel sent Harris a letter, requesting that he provide her Client 3's file and that he sign and return an enclosed substitution of counsel form. Harris did not respond to this letter.

On May 10, 2007, Opposing Counsel filed an Execution Against Petitioner (Client 3) and an Affidavit in support with the court, requesting the court to lift the stay and arrest Client 3. The court granted the request on May 16, 2007. Harris learned about the bench warrant for Client 3, but did not notify Client 3 of it.

On May 14, 2007, Successor Counsel sent Harris a letter, again requesting Client 3's file and the completed substitution of counsel form. Harris did not respond to this letter. On May 29, 2007, Successor Counsel telephoned Harris and left voicemail requesting Client 3's file and the substitution of counsel form. Harris did not respond. Harris eventually returned the substitution of counsel form to Successor Counsel. Harris did not send Client 3's file. Successor

Counsel went to Harris' office to request the file. On June 11, 2007, Harris sent Successor Counsel Client 3's file. Successor Counsel believed the file was incomplete as it did not include the Execution and Affidavit filed by Opposing Counsel. The file also did not include any correspondence between Harris and Client 3. Thus Successor Counsel and Client 3 remained unaware of the Order for Contempt and Execution.

In June 2007, Successor Counsel filed a request and consent for substitution of attorneys, which was granted. Shortly thereafter, Successor Counsel filed a Notice of Motion and Motion for Revision of Judgment and Petition for Appointment of Guardian Ad Litem. A scheduling conference regarding the motion was set for Wednesday, August 22, 2007. Successor Counsel attended this hearing with Client 3, during which they first learned of the bench warrant against Client 3. Immediately following the hearing Client 3 was arrested and taken to jail.

On August 24, 2007, Successor Counsel filed a Petitioner's Notice of Motion and Motion for Relief from Judgment and Orders regarding the execution of the bench warrant. On Tuesday, August 28, 2007, a hearing was held regarding such motion. The court granted the motion and released Client 3 from custody on that day.

By failing to failing to timely act in furtherance of the resolution of the equalization payment, and by failing to attend the January 23, 2007 contempt hearing, Harris violated SCR 20:1.3, which provides, "A lawyer shall act with reasonable diligence and promptness in representing a client."

By failing to respond to Client 3's telephone calls, failing to notify Client 3 of the proposed Stipulation and Order regarding the property equalization issues, failing to notify Client 3 of upcoming hearings, and failing to advise Client 3 of the Order for Contempt, and

failing to advise Client 3 of the Execution against him, Harris violated former SCR 20:1.4(a) (effective through June 30, 2007), which provides, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

By failing to promptly provide Client 3’s file to him or Successor Counsel, despite numerous requests, Harris violated former SCR 20:1.16(d) (effective through June 30, 2007), which provides in relevant part, “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.”

Harris was privately reprimanded on March 12, 2007 for violations of SCR 20:1.3 and former SCR 20:1.4(a), occurring in each of two separate grievance matters.

For the above misconduct, and in accordance with SCR 22.09(3), Attorney Benjamin H. Harris is hereby publicly reprimanded.

Dated this 21st day of April, 2008.

SUPREME COURT OF WISCONSIN

/s/ David R. Friedman  
Honorable David R. Friedman, Referee